

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.
NO. 05-10088-MBB

JULIANNE MARIE EVANS
Plaintiff,

VS.

NANTUCKET COMMUNITY SAILING, INC.,
RONAN O'SIOCHRU and DONNACHA KIELY
Defendants.

DEFENDANT'S, NANTUCKET COMMUNITY SAILING, INC.,
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Now comes the defendant, Nantucket Community Sailing, Inc., in the above entitled action, by and through its undersigned counsel, Clinton & Muzyka, P.C., and files its Answer to plaintiff's Amended Complaint as follows:

1. Paragraph 1 contains allegations of law to which a response is not required, but to the extent that a response is required, the defendant denies all the allegations contained therein.
2. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies same.
3. The defendant admits that it is a non-profit corporation organized under the laws of the

Commonwealth of Massachusetts with a principal place of business located in Nantucket, Massachusetts. The defendant denies the remaining allegations contained in Paragraph 3.

4. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies same.
5. The defendant admits the allegations in Paragraph 5.
6. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies same.
7. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore denies same.
8. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and therefore denies same.
9. The defendant is without personal knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraph 9
and therefore denies same.

10. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies same.
11. The defendant denies the allegations in Paragraph 11.
12. The defendant denies the allegations in Paragraph 12.
13. The defendant denies the allegations in Paragraph 13.
14. The defendant denies the allegations in Paragraph 14.
15. The defendant denies the allegations in Paragraph 15.
16. The defendant denies the allegations in Paragraph 16.

WHEREFORE the defendant, Nantucket Community Sailing, Inc., prays that this Honorable Court dismiss with prejudice plaintiff's Amended Complaint together with costs and reasonable attorney's fees.

AFFIRMATIVE DEFENSES

Now comes the defendant, Nantucket Community Sailing, Inc., and incorporates the following Affirmative Defenses into each Count of its Answer as more fully appears below.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that the plaintiff has failed to state a cause of action upon which relief can be granted.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff sustained personal injuries as alleged, which is specifically denied, it was due to the action and/or omissions of individuals for whom the defendant is not legally responsible.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff sustained injury as alleged, which is specifically denied, those injuries were the result of an Act of God for which the defendant are not legally responsible.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, it was due in whole or in part to the plaintiff's own negligence and failure to exercise a reasonable degree of care and not due to any negligence or fault on the part of the defendant nor

any person or persons for whom the defendant may be legally responsible.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, it was due in whole or in part to the plaintiff's assumption of the risks associated with sailing.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, the plaintiff has failed to mitigate her damages.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that the post injury actions and vessel navigation were pursuant to plaintiff's authorization and request and not in violation of any applicable law and/or regulation.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, such injury was without the fault, knowledge, or privity of the defendant; that the damages claimed herein exceed the value of each vessel, including their pending freight; and the defendant herewith claims benefit of any and all laws and statutes of the United States of America, including but not

limited to, Limitation of Liability of the defendant, 46
USCA, Appx. § 183 (b) for each vessel.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE
DEFENSE**, the defendant is a charitable organization for
purposes of M.G.L. c. 231, § 85K and thereby entitled to
charitable immunity.

WHEREFORE, the defendant prays that the above Amended
Complaint be dismissed with prejudice together with costs
and reasonable attorney's fees.

By its attorneys,

CLINTON & MUZYKA, P.C.

"/s/ Thomas J. Muzyka"
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Dated: August 11, 2005